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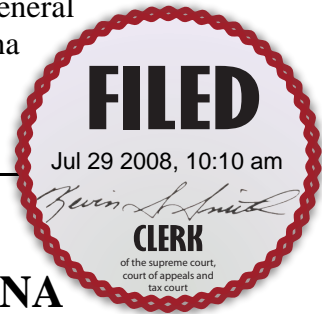
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**IN THE
COURT OF APPEALS OF INDIANA**

RONNIE DRANE,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 45A04-0712-CR-725

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Diane Ross Boswell, Judge
Cause No. 45G03-0210-MR-8

July 29, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Ronnie Drane contends that the trial court abused its discretion in admitting evidence of other bad acts at his trial for two counts of murder, class A felony attempted murder, and class B felony aggravated battery. We affirm.

The facts most favorable to the jury's verdict indicate that on October 12, 2002, Simeon Bradley, accompanied by Larry Peaches, Jr., traveled from Indianapolis to Gary, Indiana, to visit his friend Herman Buchanan. The two met Buchanan at his mother's house just after dark. Shortly thereafter, Drane arrived. Bradley, who had a federal warrant out for his arrest on drug conspiracy charges, remained in the kitchen when Drane arrived and avoided conversation with him. Bradley overheard Drane tell Peaches that someone outside in the car wanted Peaches to give Drane some cocaine to show them. Drane then left the living room and went to the restroom. Minutes later he emerged, firing a handgun. Drane first shot at Buchanan, who was in the dining room, hitting him once in the jaw. He then turned and shot at Peaches, fatally wounding him. Bradley and a wounded Buchanan ran out the back door, leaving Buchanan's mother Delores still inside with Drane.

Once outside, both Bradley and Peaches could hear additional gunshots from inside the home. Bradley and Buchanan ran from the scene in separate directions. Buchanan called Larry Peaches, Sr., informed him of what had just occurred, and asked him to go to the house and check on his mother. Bradley used his cell phone to arrange for another friend to pick him up and take him back to Indianapolis.

Patrolman Robert Bridgeman of the Lake County Sheriff's Department was the first to arrive at the scene. Upon his arrival he observed Buchanan standing outside. Buchanan was shaking and appeared frightened. He was also barely capable of opening and closing his

mouth. Buchanan told the officer that his cousin Drane had shot him. He also told Officer Bridgeman that his brother and mother had been killed by his cousin and were still in the house. Officer Bridgeman then observed Larry Peaches, Jr. slumped over inside the front door of the house. Corporal James Tatge found Delores Buchanan dead in a bedroom closet. An autopsy indicated that both Peaches and Delores died from multiple gunshot wounds.

A week after the October 12th shootings, Buchanan moved to Frankfort, Kentucky to live with his brother for a short time. Bradley also later moved to Frankfort, where he and Buchanan found a place to live together. In March 2003, Claude Fisher and Drane's father Ricky, accompanied by a woman, went to Kentucky, where they met up with Drane. Drane asked Fisher if he had a gun. When Fisher informed him that he did not, Drane took him to a strip club, where he was given one. Ricky also had a gun. The men had a woman arrange a meeting between herself and Buchanan at the strip club, where the men awaited his arrival. Ricky told Fisher that they were "to shoot this guy ... because he was a witness in a case against Ronnie." Tr. at 565. When Buchanan arrived, Fisher fired his gun into the ground in his direction, and Ricky drew and aimed his weapon but did not shoot. Buchanan ran back into the strip club, and Fisher and the Dranes sped away. After the botched murder attempt, Ricky and Fisher drove back to Gary.

On March 7, 2003, Bradley observed Buchanan pull up in his car outside their apartment in Frankfort. When Bradley opened the door for Buchanan, he heard him say to someone, "you don't have to do this." *Id.* at 617-618. When Bradley asked whom he was speaking to, Drane pointed his handgun at Bradley and began firing. Bradley then saw Drane shoot Buchanan multiple times as Buchanan attempted to run away. Bradley closed the door

and locked it. After hearing Drane speed away, Bradley reemerged from the apartment to see Buchanan lying on the ground bleeding from his chest. When the police arrived a few minutes later, Buchanan was dead.

Federal marshals apprehended Drane in Tennessee in March of 2004. The State charged Drane with two counts of murder, class A felony attempted murder, and class B felony aggravated battery related to the October 2002 shooting of Bradley and the Buchanans. On August 9, 2007, a jury found Drane guilty of all counts except the class B felony aggravated battery charge. This appeal ensued.

Drane contends that the trial court erred in admitting evidence regarding his involvement in the attempted murder and murder of Herman Buchanan. Specifically, Drane contends that the trial court erred in admitting the testimony of Fisher and Bradley and copies of a Kentucky indictment charging him with the murder of Herman Buchanan, the attempted murder of Simeon Bradley, and reckless endangerment of two other persons. The admission or exclusion of evidence is a determination entrusted to the trial court's discretion. *Farris v. State*, 818 N.E.2d 63, 67 (Ind. Ct. App. 2005), *trans. denied*. "We will reverse a trial court's decision only for an abuse of discretion. An abuse of discretion occurs when the trial court's action is clearly erroneous and against the logic and effect of the facts and circumstances before it." *Id.* (citation omitted).

The admission of evidence of other crimes is constrained by Indiana Rule of Evidence 404(b), which provides in relevant part:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, intent,

preparation, plan, knowledge, identity or absence of mistake or accident.

When a defendant objects to the admission of evidence on the grounds that it would violate Rule 404(b), the following test is applied: (1) the court must determine that the evidence of other crimes, wrongs, or acts is relevant to a matter at issue other than the defendant's propensity to commit the charged act; and (2) the court must balance the probative value of the evidence against its prejudicial effect pursuant to Indiana Evidence Rule 403. *Matthews v. State*, 866 N.E.2d 821, 825 (Ind. Ct. App. 2007).

We have previously held that threats against witnesses are considered as attempts to conceal or suppress implicating evidence and are "relevant and admissible" to demonstrate the guilty knowledge of the accused. *Id.* (citing *Johnson v. State*, 472 N.E.2d 892, 910 (Ind. 1985); *see also Valle v. State*, 550 N.E.2d 746, 748 (Ind. 1990) (evidence of killing and wounding of two potential witnesses admissible as threats). Accordingly, evidence of Drane's participation in an attempted murder and subsequent murder of a state's witness was admissible for a purpose other than merely showing his propensity to engage in wrongful acts. Therefore, the trial court did not abuse its discretion in admitting Fisher's and Bradley's testimony.

As for the copies of the Kentucky indictment, such evidence is merely cumulative of the testimony of Bradley and Fisher that was properly admitted. As a result, even if the copies of the indictment were improperly admitted, we find no reversible error. *See Blanchard v. State*, 802 N.E.2d 14, 30 (Ind. Ct. App. 2004) ("The erroneous admission of evidence that is merely cumulative of other evidence in the record is not reversible error."). Therefore, we affirm Drane's convictions.

Affirmed.

BARNES, J., and BRADFORD, J., concur.